

**1. DEFINITIONS**

- 1.1 "Customer" means the person, company, partnership or other legal entity that enters into this agreement for the supply of goods and services from the Dynamic Marine Limited.
- 1.2 "DML" means Dynamic Marine Limited.
- 1.3 "Due date" means seven (7) days after the date of the invoice.
- 1.4 "Goods" means all goods supplied or sourced by DML during the course of any services undertaken for the Customer.
- 1.5 "Normal Business Hours" means: 7am – 5pm Monday to Friday inclusive; (but excluding working, through lunch breaks, on the weekends or Public Holidays).
- 1.6 "Price" means the Price payable in *NZ dollars* (plus any Goods and Services Tax ("GST") where applicable) for the Goods and Services supplied by DML.
- 1.7 "Services" means the services provided to the Customer by DML including but not limited to servicing and maintenance of vessel and on-board marine systems, support and appraisal, schedule of record and Vessel Profiling packages or as otherwise agreed between DML and the Customer.
- 1.8 "Vessel Profiling" means the set price packages for specified services of which further details are described and available on DML's website.

**2. ACCEPTANCE OF TERMS AND CONDITIONS**

- 2.1 The Customer shall be bound by these terms and conditions upon the placement of an order for Goods and Services with DML.

**3. QUOTATION AND PRICE**

- 3.1 Quotations for Goods and Services shall only be valid if recorded in writing and signed for and on behalf of DML or sent from DML's email address. Quotations shall be valid for thirty days (30) days from the date of issuance and shall be exclusive of goods and services tax unless otherwise specified ("quotation").
- 3.2 Until accepted by the Customer all quotations may be subject to revision by DML.
- 3.3 Where no written quotation has been provided by DML then the contract price shall be as follows:
  - 3.3.1 As stated in any invoice or invoices issued by DML to the Customer for the Goods and services provided; or
  - 3.3.2 Where the Customer is purchasing a Vessel Profiling Package the Price shall be the "set price" as advertised <https://www.dynamicmarine.co.nz/> at the time the Customer accepts these Terms and Conditions; or
  - 3.3.3 In the absence of any invoice, quotation or set price then the Price of services shall be calculated at DML's hourly rate from time to time plus the cost of goods provided.
- 3.4 The Customer will be responsible for all delivery costs, travel costs, cost of goods, berthing or haul-out costs (where berthing or haul-out is required), and any other costs incurred by DML in supply of the Goods and Services.
- 3.5 Emergency Call-Outs for critical equipment after hours shall accrue a minimum Call-Out fee of one (1) hour labour cost, in addition to those cost set out in clause 3.3.2 and 3.3.3 hereof and if the Services are provided after hours then DML reserves the right to charge the Customer additional labour costs at overtime rates.

**4. DELIVERY OF GOODS**

- 4.1 DML may deliver Goods in separate instalments which will be invoiced and paid in accordance with the provisions in these terms and conditions

**5. VARIATION TO CONTRACTED GOODS AND SERVICES**

- 5.1 The Customer will notify DML in writing of all required Variations and DML will provide the Customer with the cost of such variations by way of invoice. The Customer shall have three (3) working days to accept the cost of the variation submitted. Failure to do so will entitle DML to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

**6. UNIDENTIFIED ISSUES OR FAULTS**

- 6.1 If upon the commencement of the services previously unidentified faults are found, DML will immediately notify the Customer of the same and provide a revised quotation to complete the Services. The Customer shall have (3) three working days to respond to revised quotation. Failure to do so will entitle DML to substitute the revised quotation which will become the Price payable by the Customer at completion.

**7. SUBSTITUTION OF GOODS**

- 7.1 Where the Goods specified in the Quotation are unavailable from DML's third party suppliers during the provision of services DML reserves the right to provide alternatives of a same or similar quality; DML will give notice of all such substitutions to the Customer.

8. **ACCESS**

- 8.1 The Customer shall ensure that DML has clear and free access to the job site at all times to enable them to undertake the Services. DML shall not be liable for any loss or damage to the site unless due to the negligence of DML.
- 8.2 While DML will use its best endeavours to provide the contracted services at the time agreed with the Customer, DML will not be liable for any loss or damage incurred by the Customer as a result of any inability by DML to provide the said services at the agreed time nor will DML be liable to pay compensation to the Customer. Where DML is unable to provide the contracted services as a result of an act or omission of the Customer DML shall be entitled to be compensated for any financial or other loss sustained by DML.

9. **TERMS OF PAYMENT**

- 9.1 Payment for Goods and Services shall be made in full within seven (7) days of the date of the invoice (the due date), unless otherwise agreed in writing with the Customer.
- 9.2 In certain circumstances and at DML's sole discretion:
- 9.2.1 A deposit may be required before the work commences; or
  - 9.2.2 Payment shall be due on delivery of the Goods; or
  - 9.2.3 Payment shall be due before delivery of the Goods; or
  - 9.2.4 By way of instalments/progress payments in accordance with an agreed payment schedule at the discretion of DML
- 9.3 Payment may be made by cash or by bank transfer to DML's nominated bank account.

10. **DEFAULT**

- 10.1 If the Customer fails to make payment when due DML reserves the right to charge default interest at the rate of 14% per annum which shall accrue on a daily basis on the total amount outstanding from the date payment was due until payment is made in full.
- 10.2 Where payment, in full or in part are to be made in advance prior to the completion of the Services and Goods provided to the Customer and such payments are outstanding for 7 days from the Due Date, DML may in its discretion cease work until payments have been made in full.
- 10.3 An administration fee on all overdue invoices shall apply daily from the due date of payment, until the date payment is made at a rate of 2.5% per calendar month (such fees shall compound monthly at DML's discretion).
- 10.4 The Customer will be liable for all costs and disbursements incurred by DML in recovering all outstanding payments and such costs shall may include internal administration fees, legal costs on a solicitor and own client basis, DML Debt collection agency costs, and bank dishonour fees and any other expenses incurred by DML in recovery of the outstanding payments.
- 10.5 Further to any other rights or remedies DML may have under this Agreement, if a Customer has made payment to DML, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by DML under this clause 10.1 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention of the Customer's obligations under this Agreement.
- 10.6 DML is entitled to cancel all or any part of any uncompleted order for Services or Goods where:
- 10.6.1 any money payable to DML becomes overdue, or;
  - 10.6.2 the Customer has exceeded any applicable credit limit provided by DML; or
  - 10.6.3 the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - 10.6.4 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

11. **WARRANTY**

- 11.1 Any advice, recommendation, information, assistance or service provided by DML in relation to Goods or Services supplied is given in good faith and is based on DML's own knowledge and experience.
- 11.2 Manufacturer's warranties apply where available. Where the Manufacturer Warranty is for replacement for Goods only the Customer will be responsible for the costs of removal and replacement of the faulty equipment. The Customer shall be responsible for making any warranty claim directly with the Manufacturer
- 11.3 DML shall ensure that all Goods are installed in a manner that is fully compliant with industry standards and in accordance with the manufacturer's guidelines. Any request by the Customer for the installation of the Goods outside industry standards for Goods specifications and recommendations, shall be in writing and shall not be the subject of any warranty claim whatsoever by the Customer against DML or the Manufacturer.
- 11.4 All descriptive specifications, illustrations, drawings, data, dimensions and weights stated in DML's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Terms and Conditions of Trade, unless expressly stated as such in writing by DML.
- 11.5 The Customer will ensure that all goods or equipment supplied by the Customer to DML for installation are of the correct specification, type, size, rating, standard, quality, colour and finish, conform with all relevant New Zealand standards and local statutory requirements, and are as specified in the specifications, drawings and plans upon which DML based the quotation on and, the Customer agrees to indemnify DML against any costs incurred by DML in rectifying errors in the same if required.

- 11.6 Where goods are repaired under warranty the Customer shall be responsible for the cost if any of the removal and replacement of defective goods.
- 11.7 Where DML has performed temporary repairs:
- 11.7.1 DML offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
- 11.7.2 DML will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair
12. **DEFECTS**
- 12.1 Within ten (10) days of delivery of the goods the Customer shall notify DML of any defects in the Goods and Services. Where the Customer fails to make such notification, the Customer shall be deemed to have accepted the Goods and Supply thereof.
- 12.2 Where the Customer notifies DML of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote DML shall be entitled within a reasonable time to inspect the Goods. Where the Goods are found to be faulty DML will be entitled to, subject to clause 12.1 hereof, either replace the Goods or repair the Goods at DML's discretion.
- 12.3 DML may in its absolute discretion accept non-defective Goods for return. The Customer will pay any costs incurred in the return of the Goods to DML (including costs to dismantle and remove from vessel where appropriate including any freight or delivery costs).
13. **CONSUMER GUARANTEES ACT 1993**
- 13.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by DML to the Customer.
- 13.2 Notwithstanding any remedies available under the Consumer Guarantees Act, DML shall not be liable for any loss of income or other monetary gains where the equipment and/or vessel is inoperable due to the delay or non-arrival of any outside sourced components that are beyond the control of DML.
14. **COMPLIANCE WITH LAWS**
- 14.1 The Customer and DML shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including but not limited to, any WorkSafe guidelines or any other relevant safety standards or legislation pertaining to the Services.
- 14.2 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
15. **CONFIDENTIAL INFORMATION**
- 15.1 The Customer authorises DML to collect, retain and use any information about the Customer, for the purposes of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Services or Goods provided by DML to any other party.
- 15.2 The Customer authorises DML to disclose any information obtained to any person for the purposes as set out in clause 15.1.
- 15.3 Where the Customer is an individual, the authorities under clauses 15.1 and 15.2 are authorities or consents for the purposes of the Privacy Act 1993.
16. **INTELLECTUAL PROPERTY**
- 16.1 DML owns and has copyright in all products work, designs, specifications, documents and software produced by DML in connection with the Services and Goods provided pursuant to this contract and the Customer may use the Services and Goods only if paid for in full and for the purposes for which they were intended and supplied by DML.
17. **RISK**
- 17.1 Delivery occurs at the time possession of the Goods passes to the Customer (or person nominated by Customer) from DML. The risk in Goods supplied passes to the Customer on delivery.
- 17.2 DML or its employees may be required to test drive or otherwise move or carry out tests on the Customers Goods. DML will not be liable for any damages caused to, or by, the equipment and/or vessel during such tests or movement unless it arises from the recklessness or wilful misconduct of DML or its employees.
- 17.3 The Customer will remain responsible for ensuring that all its Goods are insured while being held by DML for repair or servicing. DML will take all appropriate precautions to ensure the Goods that are held by DML for repair or servicing are kept safe from damage and DML shall not be liable for loss or damage to the Customers Goods while in the possession of DML.
18. **TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)**
- 18.1 Title in any Goods and Services supplied by DML including where attached, fixed or incorporated into any properties of the Customer shall pass to the Customer once payment has been made in full for all Goods and Services provided by DML
- 18.2 The Customer gives irrevocable authority to DML to enter any premises occupied by the Customer or on which the Goods are situated at any reasonable time after default by the Customer to remove and repossess any Goods and any other property to which the Goods are attached to or in which the Goods are incorporated. DML shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort otherwise in any way whatsoever unless

by statute such liability cannot be excluded. DML may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and Services and credit the Customer's account with the invoice value therefor less such sum as DML reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit any costs.

18.3 When Goods and Services are retained by DML pursuant to clause 18.2 the Customer waives the right to receive notice under section 120 of the Personal Property Securities Act 1999 ("PPSA") and to object under section 121 of the PPSA.

18.4 The Customer:

18.4.1 Agrees that nothing in sections 114(1)(a) or 117(1) (c), 133 and 134 of the PPSA will apply to the Terms and Conditions of trade; and

18.4.2 Waives the Customer's rights contained in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

19. **DISPUTE RESOLUTION**

19.1 Any claim or dispute arising under these Terms and Conditions of Trade shall be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.

20. **CANCELLATION**

20.1 This Agreement may be cancelled by either DML or the Customer upon giving seven (7) days written notice.

20.2 Where DML cancels this agreement pursuant to clauses 10 and 20.1 DML shall repay to the Customer any money paid by the Customer for the Goods and Services and DML shall not be liable for any loss or damage whatsoever arising from such cancellation.

20.3 Where the Customer cancels this Agreement pursuant to clause 20.1 and before Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by DML as result of the cancellation including, but not limited to, any loss of profits.

20.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items will not be accepted once an order has been placed.

21. **PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**

21.1 Where the Customer is a company or trust, the director(s) or trustee(s) signing this agreement, also sign this agreement in their personal capacity and jointly and severally and personally undertake as principal debtors to DML the payment of any and all monies now or hereafter owed by the Customer to DML and indemnify DML against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in these Terms and Conditions of trade. The Customer and Guarantor shall be jointly and severally liable under the Terms and Conditions of Trade and for payment of all sums due hereunder.

22. **SERVICES OF NOTICES**

22.1 Any notice may be given by phone, in person, posted or sent by email to the Customer (or where a company to any of your directors).

23. **GENERAL**

23.1 The failure by either party to enforce any provision of these terms and conditions of trade shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions of trade shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Courts of New Zealand.

23.3 DML may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under these Terms and Conditions of trade by so doing. The Customer shall have no authority to give any instruction to any of DML's sub-contractors without the authority of DML.

23.4 The Customer agrees that DML may amend its terms and conditions of trade from time to time and the new Terms and Conditions of Trade shall take effect from the date on which the Customer receives notification of the same.

23.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

23.6 Both parties warrant that they have the power to enter into these Terms and Conditions of Trade and have obtained all necessary authorisations to allow them to do so, that they are not insolvent and that this Terms and Conditions of Trade creates a binding and valid legal obligation upon them.

24. **LIMITATION OF LIABILITY**

24.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon DML which cannot by law (or which can only to a limited extent by law) be excluded. Subject to the above terms, DML excludes all such imposed warranties, conditions or obligations to the extent permitted by law and excludes any warranty, condition or obligation imposed or implied under common law, equity or otherwise.

- 24.2 Except to the extent that the law prevents DML from excluding liability, DML shall not be liable for any loss or damage of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by the Customer and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from Goods and/ or Services provided by DML to the Customer.
- 24.3 The Customer shall indemnify DML against all claims and loss of any kind whatsoever however caused or arising brought by any person or entity in connection with any matter, act, omission, or error by DML, its agents or its employees in connection with the supply of Goods and/or Services;
- 24.4 To the extent that DML is liable for any reason for any loss suffered or liability incurred by the Customer arising from any breach of these Terms of Trade or for any other reason, such liability is limited to the **lesser value of** the following: (i) the amount of the Price or (ii) the sum of \$5,000,000.00 including costs.
- 24.5 Any claims under these Terms of Trade must be made in writing to DML by the earlier of the following events: (i) 5 (five) calendar months from the date of the delivery of the Goods and/or Services supplied by DML to the Customer or (ii) 5 (five) calendar months from the date the Services are completed by DML for the Customer.

**Dynamic Marine Ltd:** 12 Lucas way, Albany, Auckland, New Zealand.  
Phone 09 391 0120 Email [info@dynamicmarine.co.nz](mailto:info@dynamicmarine.co.nz) Web [www.dynamicmarine.co.nz](http://www.dynamicmarine.co.nz)